IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Bail Appl..No. 4224 of 2007()

AGAINST THE ORDER IN LP 10 1993 IN
CC.1781/1991 of J.M.F.C.,KUNNAMKULAM

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: PETITIONER

K.P.HUSSAIN,
K.P.HOUSE,PATHIRIPPALAM,
OTTAPPALAM,PALAKKAD DISTRICT.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS: RESPONDENTS

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1. SIVADASAN @ SADASIVAN
S/O.NARAYANAN, KIZHAKKOOT HOUSE,
THUYYAL.P.O. THALAPPILLI TALUK,
THRISSUR.

2. STATE OF KERALA REPD BY SUB INSPECTOR
OF POLICE,KUNNAMKULAM,THRISSUR DT THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.4224 of 2007

Dated this the 12th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. He did not appear before the learned Magistrate. Consequently, he finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful. He has not been served with any notice. He is willing to surrender before the learned Magistrate and co-operate with the court for the expeditious disposal of the case. He apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The case against him has now been transferred to the list of Long Pending Cases. It is, in these circumstances, prayed that directions under Section 438 and/482 Cr.P.C in his favour.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory

reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. I find no reason to issue any direction under Section 482 Cr.P.C also. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-